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Red Devil Auto & Fleet Repair, LLC and Robert D. Kamalo. Cases 28–CA–146421, 28–CA–152886

January 24, 2017

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA
AND MCFERRAN

The General Counsel seeks a default judgment in this case on the ground that Red Devil Auto & Fleet Repair, LLC (the Respondent) has failed to file an answer to the compliance specification.

On March 17, 2016, the Board issued an Order¹ that, among other things, ordered the Respondent to offer reinstatement to discriminatee Robert D. Kamalo and make him whole for any loss of earnings and other benefits resulting from his unlawful discharge in violation of Section 8(a)(3) and (1) of the Act.

A controversy having arisen over the amount of backpay due Kamalo, on September 29, 2016, the Regional Director for Region 6² issued a compliance specification and notice of hearing setting forth backpay for a closed period from February 13, 2015 (the date of Kamalo's discharge, as stated in the compliance specification³), to May 23, 2016 (the date Kamalo declined the Respondent's offer of reinstatement), and notifying the Respondent that an answer must be filed by October 20, 2016, in conformity with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer. By letter and email dated October 27, 2016, the Region advised the Respondent that no answer to the compliance specification had been received, and that unless an answer was received by November 3, 2016, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer.

On November 4, 2016, the General Counsel filed with the Board a motion to transfer and continue matter before the Board and for default judgment, with exhibits at-

tached. On November 8, 2016, the Board issued an Order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

Ruling on the Motion for Default Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the respondent fails to file an answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the motion for default judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and we grant the General Counsel's Motion for Default Judgment. Accordingly, we conclude that the backpay due Kamalo is as stated in the compliance specification and we will order the Respondent to pay that amount, plus interest accrued to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Red Devil Auto & Fleet Repair, LLC, Surprise, Arizona, its officers, agents, successors, and assigns, shall make whole discriminatee Robert D. Kamalo by paying him the amount of \$10,281.40, plus interest accrued to the date of payment as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010), and minus tax withholdings required by Federal and State laws.⁴

¹ Unpublished order, adopting, in the absence of exceptions, the decision of Administrative Law Judge Gerald M. Etchingham issued on February 3, 2016 (JD (SF)-04-16).

² On March 21, 2016, the General Counsel issued an Order transferring these cases from Region 28 to Region 6.

³ The judge's order states that the date of Kamalo's discharge was February 12, 2015, but the compliance specification states that the date of Kamalo's discharge was February 13, 2015. Because we deem the allegations in the compliance specification to be true, we find that the backpay period begins on February 13, 2015, as stated in the compliance specification.

⁴ This amount does not yet include any excess tax. As set forth in the compliance specification, the Respondent is also liable for the adverse tax consequences for any discriminatee receiving a lump-sum backpay award. These amounts may be updated to reflect the actual date of payment. Any adverse tax consequences shall be reported in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016); *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014).

Dated, Washington, D.C. January 24, 2017

Mark Gaston Pearce, Chairman

Philip A. Miscimarra, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD